



## HIGH COURT OF AUSTRALIA

26 June 2013

### X7 v AUSTRALIAN CRIME COMMISSION & ANOR

[2013] HCA 29

Today a majority of the High Court held that the *Australian Crime Commission Act 2002* (Cth) ("the Act") did not authorise an examiner, appointed under the Act, to require a person charged with an indictable Commonwealth offence to answer questions before his or her trial about the subject matter of the offence.

On 23 November 2010, the plaintiff was arrested and subsequently charged with three indictable Commonwealth offences in relation to alleged conspiracies to import and traffic in a commercial quantity of a controlled drug, and to deal with money that was the proceeds of crime. Whilst in custody, the plaintiff was served with a summons, issued pursuant to the Act, which required him to answer questions before an examiner for the purposes of a special investigation by the Australian Crime Commission ("the ACC"). At the examination, the plaintiff was asked, and answered, questions about the subject matter of the offences with which he had been charged. Following an adjournment of the examination, the plaintiff refused to answer further questions about that subject matter. The plaintiff was told that he would be charged with the offence of failing to answer a question that he was required, by the examiner, to answer.

The plaintiff applied to the High Court for an injunction to prevent the ACC, by its officers and examiners, from examining him in relation to the subject matter of the charged offences. The plaintiff sought a declaration that the examination provisions of the Act were beyond the power of the Commonwealth Parliament to the extent that they permitted the compulsory examination of a person charged with an indictable offence about the subject matter of that offence. He also sought a declaration that any such examination contravened Ch III of the Constitution because it interfered with his right to a fair trial.

A majority of the High Court held that the examination provisions of the Act did not permit an examiner of the ACC to require a person charged with, but not yet tried for, an indictable Commonwealth offence to answer questions about the subject matter of the charged offence. The Court held that if the examination provisions of the Act were interpreted to permit compulsory examination in such circumstances, the provisions would effect a fundamental alteration to the accusatorial and adversarial process of criminal justice. Such an alteration could only be effected by express statutory language or by necessary implication. The Court held that examination provisions of the Act did not, expressly or impliedly, effect such an alteration. Having so held, the majority of the Court did not need to consider the plaintiff's constitutional arguments.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*